

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

OCT 15 1999

In the Matter of)

U S WEST Communications, Inc. and Rye)
Telephone Company, Inc.)

AAD-____

Federal Communications Commission
Office of Secretary

CC: 96-45

Joint Petition for Waiver of the Definition)
of "Study Area" Contained in Part 36,)
Appendix-Glossary of the Commission's)
Rules and Waiver of the Commission's)
Detailed Information Filing Guidelines for)
Part 36 Study Area Waiver Requests)

JOINT PETITION FOR WAIVERS OF
U S WEST COMMUNICATIONS, INC. AND
RYE TELEPHONE COMPANY, INC.

U S WEST COMMUNICATIONS, INC.

RYE TELEPHONE COMPANY, INC.

Philip Roselli
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2887

Garry Mac Cormack
P.O. Box 19048
Colorado City, CO 81019
(719) 676-3131

Its Attorney

President

Of Counsel,
Dan L. Poole

October 12, 1999

No. of Copies rec'd _____
List ABCDE

2

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. ENTRY OF A WAIVER TO CHANGE STUDY AREA BOUNDARIES IS APPROPRIATE	4
III. AN EXPEDITIOUS GRANT OF THE WAIVER REQUEST DOES NOT REQUIRE THE FILING OF ADDITIONAL DETAILED INFORMATION	5
IV. ENTRY OF A WAIVER OF THE “ALL-OR-NOTHING” RULE IS APPROPRIATE	7
V. CONCLUSION	10

RECEIVED

OCT 15 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
U S WEST Communications, Inc. and Rye) AAD-____
Telephone Company, Inc.)
)
Joint Petition for Waiver of the Definition)
of "Study Area" Contained in Part 36,)
Appendix-Glossary of the Commission's)
Rules and Waiver of the Commission's)
Detailed Information Filing Guidelines for)
Part 36 Study Area Waiver Requests)

JOINT PETITION FOR WAIVERS OF
U S WEST COMMUNICATIONS, INC. AND
RYE TELEPHONE COMPANY, INC.

I. INTRODUCTION AND SUMMARY

U S WEST Communications, Inc. ("U S WEST") has agreed to transfer a small service territory within the Pueblo Exchange in Colorado to Rye Telephone Company, Inc. ("Rye") (U S WEST and Rye also collectively referred to herein as "Petitioners").¹ By this Petition, U S WEST seeks a waiver to delete this one small portion of the Pueblo exchange from its Colorado study area and Rye seeks a waiver, if needed, to add these 94 access lines to its proposed study area.²

¹ Physical assets to be transferred consist of several outside copper cables, associated pair gain electronics and service drops. No switching plant is included in this transfer.

² This proposed transaction falls within the blanket Section 214 authorization for transfers as authorized in the Commission's Order. See In the Matter of The Petition and Application of U S WEST Communications For a Declaratory Ruling or, Alternatively, For Blanket Section 214 Authorization of Transfers to Unaffiliated Carriers of Less than 1,000 Access Lines Where all Existing Services

U S WEST and Rye also request that the Federal Communications Commission ("Commission") expeditiously grant this request without requiring the submission of the detailed information that the Commission has required when considering larger Part 36 study area waiver requests. As this small service area consists of only approximately 94 access lines, it does not warrant or compel the extensive public interest review by the Commission accorded much larger exchange transfers. A change in the study area boundary with regard to these 94 access lines will clearly have a no impact on the Universal Service Fund ("USF"). The cost of preparation of detailed information by the Petitioners and the subsequent review by the Commission far outweighs any value that could be attributed to requiring the filing of additional information concerning this small study area boundary change.³ Additionally, this exchange transfer has previously been found by the Colorado

Will Be Provided Without Interruption And Where the State Commission Has Approved the Transaction, Order and Authorization, 10 FCC Rcd. 6077 (1995) ("Blanket 214 Order"). Therein the Commission established four criteria: (1) no more than 1000 lines are included in the transfer; (2) there is no termination or interruption of existing services; (3) the state commission exercising jurisdiction over telecommunications carriers does not object to the transfer; and (4) waiver of the definition of study area under Part 36 has been granted for all areas involved in the transfer under the Part 36 study area waiver standards[.]

³ By separate petition filed concurrently, U S WEST and Rye request that the Commission waive the \$5,960 filing fee for waiver petitions in this instance as being in the public interest. This waiver request involves only 94 access lines. The petition for waiver fee, if imposed, would equate to approximately \$63 per access line. The 94 lines at issue are to be transferred from U S WEST to Rye for one hundred forty-eight thousand four hundred fifty-five dollars and thirty-five cents (\$148,455.35). A waiver of the filing fee in this instance is in the public interest as the fee in this case is significantly disproportionate to the number of access lines involved and the overall transaction price. Also, imposition of the filing fee would significantly raise the overall cost of this de minimis access line transfer and would

Public Utilities Commission (or "State Commission") to be in the public interest.⁴ A copy of that Recommended Decision has been attached hereto for the Commission's reference as Attachment 1.

Rye also seeks a waiver of Commission Rule 61.41(c)⁵ so that it may be regulated under rate-of-return once it acquires this small service area from U S WEST. The Commission should expeditiously review and approve this Petition. The Petition raises no new issues of law, and the facts involved herein are similar to those involved in other waiver requests, which have been approved by the Commission.⁶

be burdensome to the parties, particularly to Rye, a small independent rural telephone company.

⁴ Colorado Public Utilities Commission, Recommended Decision of Administrative Law Judge William J. Fritzel Granting Joint Application to Transfer a Portion of Certificate of Public Convenience and Necessity from U S WEST to Rye Telephone Company, and Approving Tariff Filings by U S WEST and Rye Telephone Company, Docket No. 99A-112T, Decision No. R99-1013, dated Sep. 16, 1999 ("Recommended Decision"). In addition, see Recommended Decision at 7, "The Commission [of the State of Colorado] has no objection to a change in the study area boundary upon approval of the FCC."

⁵ 47 C.F.R. § 61.41(c).

⁶ See, e.g., In the Matter of Rye Telephone Communications, Inc. and US West Communications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules and Rye Telephone Communications, Inc. Petition for Waiver of Section 61.41(c)(2) of the Commission Rules, Memorandum Opinion and Order, 11 FCC Rcd. 3643 (1996) ("Rye Telephone MO&O"). And see In the Matter of Petitions for Waivers Filed by Accipiter Communications, Inc. and U S WEST Communications, Inc., Concerning Section 61.41(c)(2) and Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 11 FCC Rcd. 14962 (1996).

II. ENTRY OF A WAIVER TO CHANGE STUDY AREA BOUNDARIES IS APPROPRIATE

The Commission froze study area boundaries fifteen years ago to prevent a telephone holding company “from spinning off high cost exchanges [within its existing service territory] as separate companies in order to maximize high cost support.”⁷ Importantly, study area boundaries were not frozen to “discourage the acquisition of high cost exchanges or the expansion of service to cover high cost areas.”⁸ The Common Carrier Bureau (“Bureau”) has repeatedly recognized that changes in study areas that “result from the purchase or sale of exchanges in arms-length transactions” do “not conflict with the Commission’s original concern.”⁹

The transfer of the small service area which is the subject of this Petition is clearly an arms-length transaction. There is no connection or relationship whatever (e.g., stock ownership, directors) between U S WEST, on the one hand, and Rye, on the other hand. Consequently, allowing the Petitioners to modify their respective study areas will “not conflict with the Commission’s original concern” in freezing study area boundaries.¹⁰ Entry of the requested waiver is thus warranted on this

⁷ In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board, Recommended Decision and Order 57 Rad. Reg. (P&F) 2d 267, 290 ¶ 65 (1984) (“Recommended Decision and Order”). See 47 C.F.R. Part 36, Appendix-Glossary (“Study area boundaries shall be frozen as they are on November 15, 1984.”).

⁸ Recommended Decision and Order, 57 Rad. Reg. (P&F) 2d at 290 ¶¶ 65-6.

⁹ In the Matter of Chequamegon Telephone Cooperative, Inc. Waiver of Sections 36.154(e)(1) and (2), and the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules, Memorandum Opinion and Order, 5 FCC Rcd. 2451 ¶ 10 (1990).

¹⁰ Id.

ground alone.

The Bureau has consistently considered three factors in reviewing study area waiver request: (1) the state commission does not oppose the transfer; (2) whether the public interest is served; and (3) no adverse impacts on the USF support program.¹¹ This transaction has already received state approval from the Colorado Public Utilities Commission as shown in the attached Recommended Decision. The State PUC also "...found that the proposed rearrangements of the exchange areas will promote the public interest and welfare and will not adversely impact the public switched network of the local exchange provider or impact the provider's financial integrity."¹²

Finally, the transfer of these 94 access lines will not impact USF.¹³ Therefore, the transfer meets the Commission's three-part test, and the public interest will be served by an expeditious grant of this waiver request.

III. AN EXPEDITIOUS GRANT OF THE WAIVER REQUEST DOES NOT REQUIRE THE FILING OF ADDITIONAL DETAILED INFORMATION

In previous, larger exchange transfers, the Commission has required that study area waiver-request petitioners provide detailed information as to USF and other impacts of the transfer. U S WEST has previously provided this detailed

¹¹ See id. at 2452 ¶¶ 11-12.

¹² Recommended Decision at 6-7.

¹³ Colorado does not currently receive any high cost assistance for these lines and, in any case, under current rules the purchasing carrier, "... should receive the same level of support per line as the seller received prior to the sale." In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd. 8776, 8942-43 ¶ 308 (1997).

information in other exchange transfer requests. On June 21, 1995 the Commission issued a Public Notice which outlined the specific materials that applicants seeking a waiver request should file with the Commission when they seek expeditious processing.¹⁴ As this transfer involves only 94 access lines in a small service area, this level of detail is neither necessary nor appropriate in this instance.

Most exchange transfers involve numerous exchanges, thousands of subscribers, and multiple buyers. This transfer, however, consists of only one small service territory, 94 subscribers, and one buyer. Accordingly, the expeditious processing of this waiver requests should not require the development of the detailed information that the Bureau has determined to be necessary to expeditiously process study area waiver request in general. Under these circumstances, no substantial value could be added by the submission of additional information. Requiring the preparation of additional detailed information regarding the transfer of these 94 access lines will, in fact, harm the public interest by adding unnecessary costs to the transaction and requiring additional administrative review time by Commission staff.

The Commission has previously recognized in the Blanket 214 Order¹⁵ that transfers of a small number of access lines do not require the same amount of review as do much larger transactions. Also, in its past approvals the Commission implicitly recognized the de minimis nature of this type of transfer and did not

¹⁴ Public Notice, Common Carrier Bureau Establishes Expedited Processing Procedures For Petitioners Seeking Part 36 Study Area Waivers, 10 FCC Rcd. 13228 (1995).

require a more extensive public interest review.¹⁶ The Commission should rule likewise and waive the requirement to file detailed transaction information in this case. Such a waiver is in the public interest as no useful information would be provided in such a filing and significant resources of both parties and the Commission would be expended with little or no substantive value.

IV. ENTRY OF A WAIVER OF THE "ALL-OR-NOTHING" RULE IS APPROPRIATE

Commission Rule 61.41(c)(2), commonly known as the "all-or-nothing" rule,¹⁷ provides that when a non-price cap company acquires a price cap company, or any part thereof, the acquiring company shall become subject to price cap regulation. This rule would require Rye to exit the National Exchange Carrier Association ("NECA") pools and become subject to price cap regulation because U S WEST, the transferor, is a price cap company. Rye seeks a waiver of this rule because the rule's application would be contrary to the public interest and would not serve any of the purposes for which the rule was adopted.

The Commission adopted the all-or-nothing rule to remove the incentive of a telephone holding company to engage in improper cost shifting.¹⁸ The Commission determined that, absent such a rule, a holding company could improperly shift costs

¹⁵ See Blanket 214 Order, 10 FCC Rcd. at 6081 ¶¶ 24-25.

¹⁶ See Rye Telephone MO&O, 11 FCC Rcd. 3643.

¹⁷ 47 CFR § 61.41(c)(2).

¹⁸ See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786, 6819 ¶ 271 (1990) ("LEC Price Cap Order"), modified on recon., 6 FCC Rcd. 2637 (1991) ("Reconsideration Order"), aff'd

in one of two ways:

1. It might attempt to shift its costs from its price cap affiliate to its rate-of-return affiliate; allowing the rate-of-return affiliate to earn more (because of its greater revenue requirement) without affecting the earnings of the price cap affiliate (i.e., without triggering the sharing mechanism); and
2. If a telephone company were allowed to go back and forth between rate-of-return regulation and price cap regulation, it could “game the system” by building up a large rate base under rate-of-return regulation, then opting for price caps again and cutting its costs to an efficient level.¹⁹

In adopting this all-or-nothing rule, however, the Commission noted that it would entertain waivers of the rule because, “in some cases, the efficiencies created by the purchase and sale of . . . exchanges may outweigh the threat of ‘gaming the system.’”²⁰

There is good cause to grant Rye a waiver of the all-or-nothing rule. The first concern cited by the Commission -- cost shifting between affiliates -- is not at issue here. Rye does not seek to establish separate affiliates under different systems of regulation. The second concern underlying the rule -- allowing a company to use

sub nom., National Rural Telecom Association v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

¹⁹ See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd. 2637, 2706 ¶ 148 (1991).

²⁰ Id. at 2706 n.207.

acquisitions as a means of choosing regulatory systems and “gaming” -- is also not raised on the facts of this case. Except for the 94 access lines it is transferring to Rye, U S WEST remains regulated under price caps; U S WEST retains no ability to bring these lines back under price caps.

Furthermore, the Commission has always been sensitive to the administrative burdens imposed on small telephone companies by the application of its rules.²¹ In its LEC Price Cap Order, the Commission recognized that small telephone companies should not be forced into a regulatory regime that was designed based largely on the historical performance of the largest telephone companies, and it therefore made price cap regulation optional for all companies below the largest eight.²²

The Commission has consistently granted waivers of the all-or-nothing rule.²³

²¹ See, e.g., In the Matter of Regulation of Small Telephone Companies, Notice of Proposed Rulemaking, 2 FCC Rcd. 1010 (1986); Report and Order, 2 FCC Rcd. 3811 (1987); Order, 3 FCC Rcd. 5770 (1988).

²² See LEC Price Cap Order, 5 FCC Rcd. at 6818 ¶ 262. In this regard, the Commission has recently reinforced this position by adopting a new (and different) set of optional incentive regulations designed specifically for smaller companies. See In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, 8 FCC Rcd. 4545 (1993).

²³ Indeed, the Petitioners are not aware of a single instance in which the Commission denied a small telephone company request for a price cap waiver. See, e.g., In the Matter of The Island Telephone Company, Telephone and Data Systems, Inc., and Contel of Maine, Inc., Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s rules, Petition for Waiver of Sections 61.41(c) and 69.3(e)(1), and Temporary Waiver of Section 69.605, of the Commission’s Rules, Memorandum Opinion and Order, 7 FCC Rcd. 6382, 6383 ¶ 9 (1992) (“Island”); In the Matter of Chautauqua & Erie Telephone Corporation and New York Telephone Company, Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the

In entering these waivers, the Commission has recognized that it “must take into account the companies’ preference, particularly for small carriers.”²⁴

V. CONCLUSION

For all the foregoing reasons, U S WEST and Rye request that the Commission expeditiously approve this waiver request. The Commission should also waive the application of the Bureau’s expedited processing procedures for study area waiver requests as no useful purpose is served by requiring the preparation and review of additional detailed information in this instance involving only 94 access lines. The Commission should waive the all-or-nothing rule so that Rye may, for the purpose of its interstate services, be regulated under rate-of-return after its acquisition of the 94 access lines in question. Finally, the Commission should waive the filing fee for this wavier Petition as being in the public interest as the fee in this

Commission’s Rules and Chautauqua & Erie Telephone Corporation, Petition for Waiver of Sections 36.125(f), 36.154, and 61.41(c) of the Commission’s Rules, Memorandum Opinion and Order, 7 FCC Rcd. At 6081, 6082 ¶ 9 (1992) (“Chautauqua”); Emery County, 7 FCC Rcd. At 6078 ¶ 16 (1992); In the Matter of U S WEST Communications and Gila River Telecommunications, Inc. Joint Petition for Waiver of the Definition of “Study Area” contained in Part 36, Appendix-Glossary, of the Commission’s Rules, Gila River Telecommunications, Inc., Petition for Declaration of Inapplicability or, Alternatively, for Waiver of Section 61.41(c) and Section 69.3(e)(11) of the Commission’s Rules, Memorandum Opinion and Order, 7 FCC Rcd. 2161, 2163-64 ¶ 17 (1992) (“Gila River”).

²⁴ Island, 7 FCC Rcd. At 6383 ¶ 10; Chautauqua, 7 FCC Rcd. At 6082 ¶ 10; Emery County, 7 FCC Rcd. At 6078 ¶ 15; Gila River, 7 FCC Rcd. At 2164 ¶ 18.

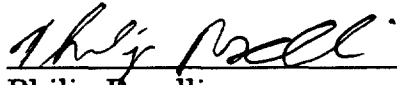
case is significantly disproportionate to the number of access lines to be transferred and the amount involved in the overall transaction.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

RYE TELEPHONE COMPANY, INC.

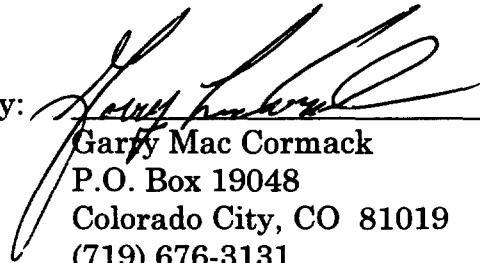
By:



Philip Roselli
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2887

Its Attorney

By:



Garry Mac Cormack
P.O. Box 19048
Colorado City, CO 81019
(719) 676-3131

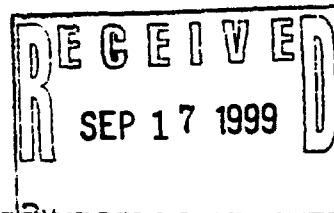
President

Of Counsel,
Dan L. Poole

October 12, 1999

ATTACHMENT

Decision No. R99-1013



BEFORE THE PUBLIC UTILITIES ~~COMMISSION OF THE~~ STATE OF COLORADO

DOCKET NO. 99A-112T

APPLICATION OF U S WEST AND RYE TELEPHONE COMPANY TO EXECUTE A
TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

DOCKET NO. 99S-150T

RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY
U S WEST COMMUNICATIONS, INC., WITH ADVICE LETTER NO. 2763.

DOCKET NO. 99S-152T

RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY
THE RYE TELEPHONE COMPANY, WITH ADVICE LETTER NO. 103.

RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
GRANTING JOINT APPLICATION TO
TRANSFER A PORTION OF CERTIFICATE
OF PUBLIC CONVENIENCE AND
NECESSITY FROM U S WEST
TO RYE TELEPHONE COMPANY,
AND APPROVING TARIFF FILINGS
BY U S WEST AND RYE
TELEPHONE COMPANY

Mailed Date: September 16, 1999

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. On March 19, 1999, U S WEST Communications, Inc.
("U S WEST"), and Rye Telephone Company ("Rye Telephone") filed

KC
JM
MN
KT
VC
PM
TK
KF
MK

an application to transfer a portion of certificate of public convenience and necessity from U S WEST to Rye Telephone.

B. The Commission issued notice of the application on March 25, 1999. This application was designated by the Commission as Docket No. 99A-112T. No notices of intervention were filed.

C. On March 19, 1999, U S WEST and Rye Telephone filed advice letters and tariffs in conjunction with their joint application to transfer a portion of certificate of public convenience and necessity from U S WEST to Rye Telephone. U S WEST filed Advice Letter No. 2763 stating that the purpose of the filing was to file revised exchange area maps for the Pueblo and Walsenburg, Colorado exchange areas. This tariff filing was designated by the Commission as Docket No. 99S-150T.

D. On March 19, 1999, Rye Telephone filed Advice Letter No. 103 stating that the purpose of its filing was to file revised exchange area maps for the Rye exchange area. The Commission designated this filing as Docket No. 99S-152T.

E. By Decision No. C99-356 mailed on April 14, 1999, in Docket No. 99S-150T, the Commission suspended the tariffs and scheduled a hearing pursuant to § 40-15-206, C.R.S., which requires a public hearing involving rearrangement of exchange areas. No interventions were filed in this docket.

F. By Decision No. C99-358 mailed on April 14, 1999, the Commission suspended the tariffs filed by Rye Telephone pursuant to Advice Letter No. 103. The Commission found that the tariffs should be suspended and set for hearing due to the provisions of § 40-15-206, C.R.S. No interventions were filed in this docket. Twelve protest letters were received by the Commission from customers who would be affected by the proposed rearrangement of exchange areas.

G. The Commission scheduled August 6, 1999 as the hearing date for the related tariff filings and application of U S WEST and Rye Telephone.

H. On July 30, 1999, U S WEST and Rye Telephone filed a Joint Unopposed Motion to Vacate the August 6, 1999 hearing and for a determination without hearing pursuant to §§ 40-15-111(2) and 40-15-206(2), C.R.S. U S WEST and Rye Telephone request that the matter be considered by the Commission without hearing since the three dockets are unopposed and the Colorado statutes, §§ 40-15-111(2) and 40-15-206(2), C.R.S., no longer require a public hearing before the Commission involving applications to rearrange telephone exchange areas. Senate Bill 99-057 which became effective on March 31, 1999, removed the requirement of a public hearing of §§ 40-15-111(2) and 40-15-206(2), C.R.S., concerning rearrangements of telephone exchange areas.

I. U S WEST and Rye Telephone correctly state that Senate Bill 99-057 removed the requirement of a public hearing for applications concerning rearrangements of exchange areas. Since a public hearing is no longer required under the provisions of §§ 40-15-111(2) and 40-15-206(2), C.R.S., and the dockets are unopposed, the Commission may consider the matter pursuant to the Commission's modified procedure under the provisions of § 40-6-109(5), C.R.S., and Rule 24(a) of the Commission's Rules of Practice and Procedure, 4 Code of Colorado Regulations 723-1.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The transfer application, of U S WEST and Rye Telephone requests approval of the Commission to transfer a portion of U S WEST's certificate of public convenience and necessity from U S WEST to Rye Telephone pursuant to Advice Letter No. 2763 filed by U S WEST in Docket No. 99S-150T and by Rye Telephone in Advice Letter No. 103 in Docket No. 99S-152T.

B. The geographical area that is proposed to be transferred from U S WEST to Rye Telephone is described as follows:

Beginning at a point common to the Pueblo and Huerfano County lines, said point being at the intersection of the common boundary of the Pueblo and Huerfano Counties with the east line of Section 1, Township 25S, Range 66W, thence easterly along the Pueblo County line approximately 30 miles to the east section line of Section 23, Township 26S, Range 61W, thence north approximately 19 1/2 miles to the northeast corner of Section 14, Township 23S, Range 61W, thence west 14 miles to the northwest corner of Section 15,

Township 23S, Range 63W, thence south four miles to the southeast corner of Section 33, Township 23S, Range 63W, thence west three miles to the southwest corner of Section 31, Township 23S, Range 63W, thence north 11 miles to the northeast corner of Section 12, Township 22S, Range 64W, thence west four miles to the northwest corner of Section 9, Township 22S, Range 64W, thence south two miles to the southeast corner of Section 17, Township 22S, Range 64W, thence west approximately ten miles to the northwest corner of Section 23, Township 22S, Range 66W, thence south two miles to the southwest corner of Section 26, Township 22S, Range 66W, thence west four miles to the northwest corner of Section 31, Township 22S, Range 66W, thence south eight miles to the southwest corner of Section 6, Township 24S, Range 66W, thence east two miles to the northeast corner of Section 8, Township 24S, Range 66W, thence south approximately 6 1/4 miles to the Huerfano and Pueblo County line, thence east approximately four miles to the southeast corner of Section 1, Township 25S, Range 66W and the point of beginning.

C. The Joint Application to Transfer the above described portion of U S WEST's certificate will also include physical assets consisting of several outside plant copper cables, associated pair gain electronics and service drops to reach existing customers.

D. There currently are 94 existing U S WEST customers within the proposed boundary change. The geographical territory of the proposed transfer and boundary changes is rural. In addition, there are 20 customers within the proposed boundary change that are Rye Telephone customers. It is proposed that the 94 current U S WEST customers will be served from the

Colorado City exchange area rather than the Pueblo/Sunset exchange area.

E. Under the proposed boundary change, former U S WEST customers' local service rates will be reduced from approximately \$34.93 (zone 3) or \$26.93 (zone 2) to approximately \$19.70 per month for basic local service.

F. Rye Telephone proposes to convert the customers to digital architecture. The customers currently served by U S WEST are served by analog technology. The digital technology is expected to improve transmission and provide other benefits to the customers. The proposed boundary change will require a change in telephone number for the 94 existing U S WEST customers.

G. The local calling area for the 94 U S WEST customers would change to the Colorado City local calling area including Pueblo and Rye. The 20 customers that are currently customers of Rye Telephone will not experience rate changes, local calling area, or telephone numbers under the proposal.

H. It is found and concluded that the joint application to transfer a portion of the certificate of public convenience and necessity from U S WEST to Rye Telephone should be approved. Under the provisions of § 40-15-11(2) and § 40-15-206(2), C.R.S., it is found that the proposed rearrangements of the exchange areas will promote the public interest and welfare and

will not adversely impact the public switched network of the local exchange provider or impact the provider's financial integrity.

I. The Commission has no objection to a change in the study area boundary upon approval of the FCC. The request of U S WEST and Rye Telephone to designate Rye Telephone as the Eligible Telecommunications Carrier for the transferred territory is granted.

J. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The joint application of U S WEST Communications, Inc., and Rye Telephone Company for Commission approval to transfer a portion of certificate of public convenience and necessity from U S WEST Communications, Inc., to Rye Telephone Company is granted.

2. The tariffs filed by U S WEST Communications, Inc., pursuant to Advice Letter No. 2763 and Advice Letter No. 103 filed by Rye Telephone Company are permanently suspended. U S WEST Communications, Inc., and Rye Telephone Company shall file new advice letters and tariffs on one day notice to implement the rearrangement of exchange areas.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

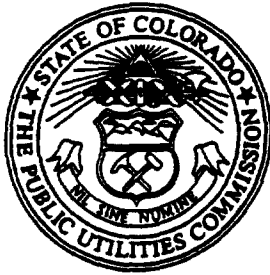
a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



WILLIAM J. FRITZEL

Administrative Law Judge

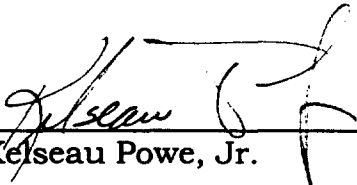
ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith
Director

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on the 12th day of October, 1999, I have caused a copy of the foregoing **JOINT PETITION FOR WAIVERS OF U S WEST COMMUNICATIONS, INC. AND RYE TELEPHONE COMPANY, INC.** to be served, via first class United States mail, postage prepaid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

*Served via hand delivery

***William E. Kennard**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Gloria Tristani**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Michael K. Powell**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Harold Furchtgott-Roth**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Susan P. Ness**
Federal Communications Commission
8th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***International Transcription
Services, Inc.**
1231 20th Street, N.W.
Washington, DC 20036

Anthony Marquez
Colorado Public Utilities Commission
Office Level 2
1580 Logan Street
Denver, CO 80203

Governor William Owens
Colorado State Government
136 State Capitol Building
Denver, CO 80203

Garry Mac Cormack
Rye Telephone Company, Inc.
POB 19048
Colorado City, CO 81019

AADxxxx.doc
10/12/99